

Exhibit S

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

IN RE) Case No. 11-02371
) (Chapter 11)
)
M WAIKIKI LLC,)
) September 7, 2011
Debtor.) 2:19 p.m.
_____)

TRANSCRIPT OF HEARING ON MOTION FOR RELIEF FROM AUTOMATIC STAY;
MOTION TO REJECT MANAGEMENT AGREEMENT WITH MARRIOTT HOTEL
SERVICES, INC., MOTION TO QUASH SUBPOENAS AND REQUEST FOR
PROTECTIVE ORDER; MOTION QUASH SUBPOENAS OF BENJAMIN RAFTER
AND CHRISTIAN OLES
BEFORE THE HONORABLE ROBERT J. FARIS
UNITED STATE BANKRUPTCY JUDGE

APPEARANCES:

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1 | SEPTEMBER 7, 2011 2:19 P.M.

2 THE CLERK: Case 11-02371, M Waikiki LLC. This case
3 is called for hearing on various matters. And, Your Honor, we
4 have counsel on line. Please, Ms. Fenning.

5 MS. FENNING: Yes, Your Honor, Lisa Fenning of Arnold
6 and Porter representing the Davidson Group as agent for the
7 Robert M. Davidson and Janice G. Davidson, as Trustees of the
8 Davidson Family Trust. It is the prospective DIP Lender.

9 THE COURT: Okay.

10 THE CLERK: Thank you.

11 THE COURT: Any other telephone participants?

12 THE CLERK: Not attorneys, Your Honor.

13 THE COURT: Okay. All right. Let's start with Mr.
14 Roesser.

15 MR. ROESSER: Good afternoon, Your Honor, Tom Roesser
16 and William Harstad appearing on behalf of Robert and Janice
17 Davidson, as Trustees of the Davidson Trust.

18 THE COURT: Okay.

19 MR. KLEVANSKY: Good afternoon, Your Honor, Simon
20 Klevansky, Patrick Neligan, and James Muenker appearing on
21 behalf of the Debtor M Waikiki.

22 THE COURT: Okay.

23 MR. MUZZI: Good afternoon, Your Honor, Christopher
24 Muzzi on behalf of Modern Management Services, LLC.

25 MS. DIDION: Good afternoon, Your Honor, Terri Didion

1 for the U.S. Trustee's Office.

2 MR. CHING: Curtis Ching for the U.S. Trustee's
3 Office.

4 THE COURT: Okay.

5 MR. NELIGAN: Your Honor, I'm Pat Neligan. I was
6 previously introduced.

7 THE COURT: Okay. Thank you. Thank you.

8 MS. TIUS: Good afternoon, Susan Tius, Rush Moore LLP,
9 Hawaii counsel for Marriott International, Inc., and Marriott
10 Hotel Services, Inc.

11 MR. FELD: Good afternoon, Your Honor, Alan Feld of
12 Sheppard Mullin Richter and Hampton, bankruptcy counsel for
13 Marriott as well.

14 MS. HARRISON: Lindsay Harrison of Jenner and Block,
15 litigation counsel for Marriott.

16 THE COURT: All right.

17 MS. TIUS: Your Honor, if I may --

18 THE COURT: Oh, one more behind you.

19 MS. TIUS: -- my understanding is --

20 THE COURT: Hold on a second.

21 MS. TIUS: I apologize.

22 THE COURT: Sharon Lovejoy on behalf of Wells Fargo
23 Bank NA, as Trustee.

24 THE COURT: Okay. Go ahead, Ms. Tius.

25 MS. TIUS: Just -- Your Honor, our understanding was

1 that Carren Shulman of Sheppard and Mullin in New York City had
2 arranged for a telephonic appearance this afternoon.

3 THE COURT: Okay. Is Ms. Shulman on the phone?

4 THE CLERK: No, Your Honor. Operator?

5 THE OPERATOR: Yes, Ms. Shulman is not connected. She
6 has not made a reservation for this afternoon.

7 THE CLERK: Thank you.

8 THE COURT: Okay.

9 MS. TIUS: Thank you.

10 THE COURT: Well, let me -- let me tell you what I --
11 what I think tentatively, and I'm sure you'll all have plenty to
12 say, but let me tell you where I am based on the papers so far.

13 I understand, from a communication through the Clerk,
14 that the Debtor wishes to continue the motion to reject the
15 management agreement. That sounds like a good idea. It's very
16 early in the case to make such a dramatic decision, and I think
17 the -- there's also a pending discovery request.

18 With regard to the motion for relief from automatic
19 stay, my inclination is to set that over for a final hearing
20 also. It seems to me there are questions of fact that have to
21 get sorted out about what property is Marriott's and what
22 property is property of the Estate.

23 We have the state court's TRO, which directs the
24 Debtor to turn over confidential information, but I would make
25 two points about that. Number one, it doesn't say what

1 confidential information is. It simply seems to carry forward
2 the terms in the agreement. And, number two, although I want to
3 be careful how I say this, the TRO, unless New York law is
4 peculiar, is not a final judgment and therefore does not have
5 preclusive effect, but in saying that I'm not, by any means,
6 inviting anybody to relitigate any of those issues and there are
7 many other doctrines such as comity that may make it
8 inappropriate to deviate from that order.

9 But, in any event, it seems to me it doesn't really
10 answer the question of what is Marriott's and what is -- is the
11 Estate's. It also does seem that there is progress, although
12 there is disputes about how much progress, that's been made in
13 getting the matter sorted out consensually. So I -- I don't
14 think I can grant that motion today. I think that ought to be
15 set for a final hearing.

16 That I think also takes the pressure off the motions
17 to quash the subpoenas, because it would give some more time for
18 these depositions to be scheduled. It looks to me like the
19 objection is really to the scheduling and not to the -- the
20 entitlement of Marriott to take the discovery.

21 So with a little more time on the motion schedule,
22 perhaps that matter can be worked out. That leaves the -- the,
23 I think, less controversial first day motions.

24 As far as the two applications to retain counsel, I'm
25 inclined, subject to hearing from especially the U.S. Trustee,

1 but others, to approve that strictly on an interim basis subject
2 to final approval once the requisite period under the rules has
3 passed. The same would go, essentially for the utilities
4 motion.

5 The cash management motion, I have more concerns
6 about. I want to give the U.S. Trustee an opportunity to look
7 at that more carefully. I suppose that could be granted on an
8 interim basis subject to something being worked out at a final
9 hearing.

10 And the other comment I wanted to make -- well,
11 another comment I wanted to make is I'm surprised by the absence
12 of the cash collateral motion. I'll just say that and leave it
13 there.

14 So that's -- those are sort of a summary of my
15 thoughts based on the papers and let me start with -- with
16 Marriott.

17 MR. FELD: Yes, thank you very much, Your Honor, Alan
18 Feld again for Marriott. Your Honor, would it be best if I
19 address your -- your tentative, as you've expressed, in -- in
20 order?

21 THE COURT: Sure.

22 MR. FELD: On the rejection motion, Your Honor, we --
23 we very much agree that it's premature, particularly since the
24 relief requested is retroactive in nature anyway to the -- to
25 the petition date. We -- we especially feel it's premature

1 without the formation of a Creditors' Committee, because the
2 unsecureds would be the ones who were -- who were most greatly
3 affected. We also would want to see the Secured Lender be able
4 to -- to weigh in on this as well because a rejection damages
5 claim would be so large given the -- the -- I believe its 28
6 years left of a 30 year term under the management agreement.
7 It's a -- it's a very consequential decision.

8 And, finally, while -- while Marriott hasn't made a
9 decision on this yet, it's very possible that -- that they are
10 considering internally the possibility of a motion to dismiss
11 which would impact this as well in light of the circumstances of
12 the filing. And that -- that's something we sort of reserve and
13 were considering internally, but we're -- we're very supportive
14 of a continuance under the circumstances with an opportunity, at
15 least, for some discovery.

16 On -- on the stay relief motion, Your Honor, I -- we
17 understand your concerns, but there are some extenuating
18 circumstances and most importantly, I think, a solution which
19 might enable us to move forward today with the Court's
20 understanding, and I'd like to give you just a little bit of
21 background on this to start with.

22 I mean this -- first of all, it's -- it's a highly
23 unusual circumstance. Typically, when a management agreement
24 is, I don't want to use the word terminated, because there's --
25 there's controversy over that, but typically when there's a

1 transition in management companies in a hotel there will --
2 there will be some notice, and there will be a transition
3 period, and there will be cooperation on both sides. Without
4 -- without pointing any fingers or anything today, this was a
5 very abrupt change that occurred 2:30 a.m. on -- on a Sunday
6 morning and, unfortunately, there was no time for any
7 transition.

8 There's -- you know, as you've probably heard in the
9 press, Your Honor, there was substantial job losses from this.
10 I think a net loss of 75 to 100 jobs at this point and that's --
11 that's the side effect, and it's a very unfortunate
12 circumstance, and I -- I understand your -- your concern about
13 the TRO in the state court, and I -- what -- what we come back
14 to, Your Honor, while there certainly was a recognition by the
15 state court that there is significant proprietary and
16 confidential material, we certainly have no issue with a
17 definition, a clear definition of those materials. And in the
18 end it's the management agreement which clearly spells that out.

19 The -- there has been some cooperation. It's been --
20 the results of it have been limited in nature, unfortunately,
21 because the majority of the most significant materials have been
22 labeled as disputed, and they're still at the hotel. Some are
23 in locked areas, some are open. Some of the most important
24 materials are on computers that are being used in every day
25 functions such as the front desk, accounting purposes, things --

1 things like that, but that -- that's a concern that I'm going to
2 come back to in a moment.

3 I'm -- I'm going to skip ahead for a moment to a
4 solution that we have, which is we've -- we've been working with
5 Debtor's counsel on a proposed form of order granting the motion
6 that would do several things. It would -- it would track the
7 items in the management agreement, and the management agreement,
8 again, was a very heavily negotiated agreement by both the --
9 the Debtor and Marriott in which there's very, very specific
10 delineation of what's proprietary, what's confidential, and what
11 belongs to who, and it -- it covers documents, it covers
12 tangible and intangible, it covers computer files and software.

13 The management agreement itself would probably be
14 enough in a normal transition. What we've tried to do, because
15 of the circumstances in this one, is to craft an order that goes
16 -- gives a little more detail. It builds in some industry
17 standards and some explanations. It's an order that both the
18 Debtor and Marriott would be able to reserve their rights under,
19 so that if there are any disputes, and I'll come to disputes in
20 a minute, nobody's -- under this order nobody is -- is waiving
21 any -- any substantive rights, but it's an order that in effect
22 spells out what is confidential and proprietary and should be
23 turned over to Marriott, and where -- where there are disputes
24 there's -- there's a reservation of rights, and this is still a
25 work in process, but there is a draft that we're working on,

1 we're not quite there yet.

2 But most importantly, the -- the order would provide
3 for two key provisions once you get past the items in the
4 management agreement.

5 One provision would be having the materials, whether
6 disputed or not -- well, the ones that are not disputed would be
7 turned over, but the materials that are disputed would be in
8 effect safeguarded, locked down in some -- at some neutral site,
9 whether it would be with a third party, but something that would
10 give, short of critical information which the Debtor needs to
11 continue operating, and we certainly don't want to negatively
12 impact their operations.

13 We -- as a matter of fact, over the weekend -- we've
14 provided the Debtor with a comprehensive list of accounts
15 payable. We've provided them with lists, from what I
16 understand, of all future reservations, and we're -- we're
17 continuing to work with them to provide them with -- with what
18 we understand they need. A lot of that they have on site
19 already, and it's -- it's mixed in with this -- this information
20 which is -- which is problematic.

21 But the idea here would be that Marriott and the
22 Debtor would agree on a neutral third party decision maker to
23 resolve disputes going forward. Our -- our -- our preference
24 would be, but I suspect Your Honor doesn't have the time
25 yourself, to -- to see the Court do it. We -- we understand

1 there's a sitting retired judge that might be available for
2 something like this. I -- I -- Marriott would certainly be
3 willing to pay its share of the costs of any kind of task like
4 that. We assume the Debtor would be as well, hopefully.

5 But securing the information, securing the materials,
6 and having a decision made in a reasonable amount of time with
7 the input of both parties seems like a practical solution that
8 -- that would allow us to either carry the motion or maybe even
9 have it granted under the circumstances of this order and -- and
10 take it off calendar.

11 And just to -- to give you -- to give the Court a
12 little more background on the -- on the nature of some of the
13 materials, I'll give you an example of one, I think, hotly
14 disputed category which is customer data.

15 I -- I think it's worthwhile to go into a little bit
16 of detail about the sensitivity of that. On a basic level, for
17 example, there's future reservations which we've already
18 provided on an individual basis, somebody that -- individuals
19 that book on a travel website, or directly with Marriott, or
20 directly with the hotel. Then you get into more complicated
21 categories such as group bookings, and you get -- that's where
22 things get a little -- a little fuzzy, because a lot of the
23 group bookings were specific events, or -- or special event
24 bookings, or similar to this.

25 There's subcategories of -- of definite confirmed

1 bookings. There's tentative bookings. There's expressions of
2 interest, but this -- this is where one gets into sort of a
3 Marriott global marketing machine. It becomes inextricably
4 intertwined with the Guest Loyalty Program, for example, the --
5 the records, all the data, the trends of the Marriott Rewards
6 Program.

7 There's a tremendous amount of work. There's a
8 tremendous amount of -- of machinery in place at -- at -- at the
9 Marriott global level that goes into attracting groups, and to
10 attracting event bookings, and that -- that data is not
11 necessarily easily -- easily separated as far as data for
12 imminent reservations or imminent bookings.

13 While this dispute resolution process is proceeding, I
14 think we'd have -- we'd have no problem making sure that the
15 Debtor has copies or sufficient information of everything that's
16 coming up while this process is pending, but we -- we think this
17 is a practical solution that -- that safeguards the
18 -- the proprietary information, the data, and allows for a
19 thoughtful resolution of any disputes without prejudicing the
20 rights of -- of any parties.

21 One -- one thing as an example that -- that is -- is a
22 major concern is if one looks at the Debtor as a business, it's
23 -- it's -- the Debtor is an entity that has ownership of the
24 hotel, but it's not truly running the business on a day to day
25 basis. It's the management company in which they made the

1 sudden transition back about ten days ago, and it's really the
2 management company running the day to day operations.

3 So, in effect, and this is what creates the urgency
4 here, because of the switch in management companies the people
5 who really have this proprietary information and proprietary
6 data is not only the Debtor, but it's really a competing
7 management company and that's what -- what creates a very
8 unstable, a very dangerous situation.

9 I mean we don't want to be back here asserting
10 infringement claims and -- and conversion claims based on trade
11 secrets, and -- and proprietary intellectual property, and other
12 things, and we want to -- I don't know damage has occurred.
13 Hopefully, it could be minimized, but we certainly think time is
14 of the essence to -- to get this kind of protective structure in
15 place to -- to minimize anything further from happening, and
16 it's -- right now -- I mean the Debtor has -- has made efforts
17 and told us things are -- are locked down. Some are; some are
18 not in the Debtor's offices.

19 I think we submitted an affidavit where there are
20 pictures of a computer that shows -- a post that indicated that
21 program may have been cracked. We -- we submitted a picture of
22 an empty file drawer showing that things were to be copied.
23 It's -- it's particularly alarming. And we -- we don't know
24 what happened. We just know what we saw when we were allowed on
25 site, but it's particularly alarming for this to be in the hands

1 of a competing management company, and we -- we would feel that
2 it's for something to be done to -- to protect all parties.

3 So that's -- I can answer any questions, Your Honor,
4 but I think that's the -- that's our position, and with a little
5 time with the Debtor's counsel I think we can work on the form
6 of order that hopefully would be acceptable, and we'd -- we'd --
7 with the Court's indulgence, we'd be -- we'd be glad to go
8 through it item by item, line by line, and hopefully arrive at
9 something that's in a workable form.

10 As far as the -- the discovery disputes and the
11 motions to quash, I think those could be easily resolved. We
12 have been talking with the Debtors, and I think that if we had a
13 reasonable schedule to -- even as holding dates, assuming that
14 the depositions are necessary for each of the -- of the four
15 witnesses that -- that they can live with, and they can commit
16 to as holding dates, I think that would really resolve it.

17 Like the Court said, I don't think the issue is the
18 entitlement to it or the scope of it, I think it's just
19 scheduling and more practical matters and that would be -- that
20 would be a resolution of that.

21 As far as the other first day motions, Your Honor, we
22 don't really have a position on them with the exception of one,
23 which I'll come back to other than to say that we haven't had a
24 chance to really read or digest them, and we would just reserve
25 our rights until a final hearing on those.

1 The one first day motion which we do have some
2 concerns about is the cash management motion. We've had some
3 difficulty understanding how the accounts work, structurally,
4 and they don't seem to be consistent with what Marriott's
5 understanding of the accounts was, but there were certain
6 accounts up until now that were controlled by Marriott that are
7 effectively frozen at this point, but the -- in -- in speaking
8 with Debtor's counsel and counsel for the Secured Lender, there
9 seems to be some confusion, and there's probably going to be
10 some discussion in -- in what accounts exist, what -- what's
11 structured, and it may be premature even on an interim basis
12 until that's -- that's ironed out and that -- that structure's
13 confirmed.

14 But certainly once that's ironed out we -- we have no
15 objection, on an interim basis, to -- to allowing that structure
16 to continue pending a final hearing and reservation of rights.
17 Give me just one second, Your Honor.

18 THE COURT: Sure, of course.

19 MR. FELD: On -- on the motions, Your Honor, that's --
20 that's about -- that's about it. We may reserve some time to
21 come back in response to anything the Debtor or other parties
22 say.

23 The -- the other concern -- to expand on a concern
24 that -- that the Court expressed. We are also very concerned
25 about how the Debtor is operating the funding operations without

1 either a DIP facility or a cash collateral agreement. There --
2 like I said there is cash frozen in the -- in the Marriott
3 control -- the controlled accounts. We're not quite sure under
4 what authority they're operating. We -- we -- we would have
5 hoped to see that as a -- as a true first day emergency matter,
6 but hopefully that -- there will be an explanation and that's
7 something that will be resolved. But -- and, Your Honor, I
8 could address any questions.

9 THE COURT: I don't have any at this point. Thank
10 you.

11 MR. FELD: Okay. Thank you very much.

12 THE COURT: Okay. Before we go on, I meant to mention
13 that the Marshal Service tells us they've basically run out of
14 money for security guards over time. So at 4:00 o'clock we have
15 to be done unless there's some dire emergency. So let me now
16 turn to the Debtor.

17 MR. MUENKER: Good afternoon, Your Honor, James
18 Muenker of Neligan Foley on behalf of the Debtor. If the Court
19 doesn't mind, I'll take up some of the initial less
20 controversial matters first --

21 THE COURT: Sure.

22 MR. MUENKER: -- and state that, obviously, as the --
23 as the Court was advised earlier we do agree to continue the
24 hearing on the motion to reject. So that issue is -- is not one
25 that the Court needs to deal with today.

1 With respect to the other routine first day motions
2 we're certainly more than happy to have those approved today on
3 an interim basis and set for a later final hearing. We have had
4 a discussion with the U.S. Trustee's Office, or at least our
5 local counsel, with respect to the bank account motion. I know
6 Your Honor, you know, raised an issue about giving the U.S.
7 Trustee some time to review that.

8 One of the issues that they, of course, had raised was
9 that they would like the Debtor to designate those accounts that
10 they're going to continue in places -- Debtor-in-possession
11 accounts, and that's something that we were willing to work with
12 them on.

13 We do understand the concern and the questions that
14 Mr. Feld raised to the Court about how the bank -- bank accounts
15 work. We actually had an opportunity to talk about that right
16 before we walked into the hearing today, and we certainly have
17 no objection, again, as long we're permitted, on an interim
18 basis, to continue to operate those accounts and don't run afoul
19 of any provisions of the Bankruptcy Code or the Bankruptcy
20 Rules. We can reserve the final determination of that for a
21 later date. We're more than happy to do that.

22 With respect to the -- what seems to be the question
23 of the day, which is, you know, how the Debtor has continued to
24 operate its business given that there is no current cash
25 collateral motion on file.

1 I can report that we anticipate having a motion to not
2 only authorize the use of cash collateral, but approve Debtor-
3 in-possession financing on file in the very near future. We
4 hope to have it on file today. If it's not on file today I -- I
5 can't imagine that it wouldn't be on file tomorrow.

6 With respect to the specific issue about funding right
7 now, and this will be spelled out in the motion, the proposed
8 DIP Lender actually advanced, on a post-petition basis, \$250,000
9 to the Debtor on an emergency basis in advance of the holiday
10 weekend, so that the Debtor would have sufficient cash to
11 purchase supplies and basically operate the hotel until we could
12 get to an interim hearing and get that motion on file. And the
13 hope, and -- and of course what we're asking -- will be asking
14 in the motion, is that that interim advance will be treated as
15 part of the DIP and rolled into the interim financing.

16 So, you know, the -- the Debtor has been provided
17 post-petition financing from a third party source and -- and
18 those are the funds that are being used to operate the hotel.

19 With respect to the --

20 THE COURT: And that's the existing Junior Secured
21 Creditors?

22 MR. MUENKER: That is correct, Your Honor.

23 THE COURT: All right.

24 MR. MUENKER: With respect to the remaining matter
25 that's in dispute, which is the motion to lift the stay, I think

1 Your Honor was absolutely correct at the beginning of the
2 hearing when you identified kind of the critical issue here,
3 which is that there is a fundamental dispute over what
4 information is at the hotel that constitutes proprietary and
5 confidential information that belongs to Marriott and what
6 information, at the hotel, is -- is property of the Bankruptcy
7 Estate, and the Debtor needs in order to operate its business.

8 And that -- you know, certainly at the outset, I want
9 to make absolutely clear, to the extent that we haven't already
10 done so multiple times in the pleadings we filed, it is not our
11 intention to try to misappropriate any truly confidential or
12 proprietary information. We obviously have an interest in
13 making sure that that information is returned to them as quickly
14 as possible for the very reasons that Mr. Feld was just talking
15 about, which is that regardless of what happens today, tomorrow,
16 or next week with respect to the return of that information,
17 they have made it quite clear that because of the way this
18 transition has been done, and because of the fact that a
19 competitor was brought in, the cat is out of the bag, so to
20 speak.

21 And so, I do think that goes to the issue about the
22 timing of the consideration of the motion. It militates a
23 little bit against the urgency because, you know, I think it's
24 quite fair to say, although we will dispute it, of course, that
25 Mr. Feld and his client will be pursuing whatever claims they

1 have as a result of what has happened regardless of whether that
2 information is turned over today or tomorrow, that's still in
3 dispute. So that's the point I want to make about that.

4 There -- there is also a -- Mr. Feld is correct that
5 we have had a number of discussions. Obviously, the parties
6 have been working very hard over the last couple of days trying
7 to resolve as many of these issues as possible.

8 They have removed approximately 154 boxes of material
9 from the hotel since the bankruptcy filing. They've removed all
10 of the computer laptop hard drives from all the lap tops that
11 were maintained at the property. We've provided access to their
12 IT people to come in and remove a lot of the software, and
13 they've also deleted a lot of things from the -- from the --
14 from the computers. The computers are unquestionably the
15 property of the Debtors. And quite obviously, the Debtors have
16 to have the computers and any other systems that are in place at
17 the hotel in order to operate the business.

18 And so, the -- the issue then becomes what -- what to
19 do with what is left. And much of that information has been
20 secured. There are ongoing discussions about how we can kind of
21 secure the rest of that information. It's complicated because a
22 lot of the information, and when Mr. Feld talks about how they
23 think the overwhelming majority of the information is still at
24 the hotel, what he's really referring to is not physical
25 documents, but information that may still remain either on

1 backup hard drives or -- or other kind of computer systems.

2 And so, there were both physical files and there are
3 electronic data that are -- that are stored on those computers.
4 The difficulty, as Your Honor might imagine is, you know, it's
5 not as simple as taking those computers and hauling them off to
6 a third party, because we have no way to operate the business.

7 And so, those are issues along with a host of other
8 issues which the Court really has only had the chance to hear a
9 little bit about, but I think you could probably imagine all the
10 issues just listening to Mr. Feld talk about some of the
11 specifics.

12 In fact, we spent about an hour and a half in a
13 conference at the hotel last night, very late at night, just
14 with the lawyers, not even with the business people walking
15 through various specific issues.

16 And so, the devil here -- I mean the devil here is in
17 the detail and that is -- that is necessarily going to require
18 some time for the parties to be able to work -- work through.

19 Mr. Feld is correct that we had a conversation last
20 night and this morning about trying to resolve this motion and
21 -- and agreeing to some form of order. The order was provided
22 to us about an hour and a half before the hearing started and as
23 you heard Mr. Feld talk about, when he was describing the order,
24 one of the things that they did in the order was not only put
25 provisions from the management agreement in the order, but they

1 actually went well beyond what the management agreement says and
2 attempted to describe, in more detail, you know, what their view
3 of proprietary and confidential information is.

4 The practical effect of the order that they provided
5 to us is that they've effectively rewritten the management
6 agreement. And -- and the reason why they indicated that they
7 had done that --

8 THE COURT: Well, if I get an agreed order great. I
9 don't -- I don't -- I'm not going to function as a settlement
10 judge. So if there's no agreement on the order, then I think
11 you probably ought to -- I mean I'd like to see an agreed order.

12 MR. MUENKER: Certainly, Your Honor.

13 THE COURT: And if there's disputes about specific
14 issues I'd be happy to resolve those if I could do that in a
15 sort of judicial context, but I don't want to get involved in
16 your settlement negotiations.

17 MR. MUENKER: I -- I understand that, Your Honor. The
18 only reason I raise that is because we are happy to do what we
19 said we would do, which is announce to the Court that there are
20 some discussions and that we're willing to go out into the hall
21 and see if we can resolve them, and then advise the Court if we
22 can resolve that. The reason why I -- I raise that issue is
23 because I think the order that they provided to us is so far
24 from what we expected to get, based on our discussions last
25 night, I'm not overly optimistic we're going to be able to do

1 that by the time that Your Honor just indicated the Court would
2 no longer be available today.

3 And so, you know, again, we committed to do that, I'm
4 willing to go do that in the hall right now, but at the end of
5 the day I think where we're probably going to be is that, you
6 know, we're going to need to set this for a hearing at a later
7 time and really give the parties some more time to talk about
8 the order and the other issues.

9 THE COURT: Okay.

10 MR. MUENKER: Thank you, Your Honor.

11 THE COURT: All right. Thank you. Let's see, who
12 would like to go next? I'll come back to you. Mr. Muzzi.

13 MR. MUZZI: Your Honor, Christopher Muzzi on behalf of
14 Modern Management Services. Just real briefly, Marriot brought
15 up about their concern about Modern being in there and managing
16 the company, and we understand their position, but Modern is not
17 opposing their motion for relief from stay. The Debtor's making
18 the call as to what property they believe is the Debtor's and
19 what is Marriott's. Modern is assisting with the transition to
20 them as the manager and has no intent or desire to obtain
21 Marriott's intellectual property.

22 And I think based on what's been announced to the
23 Court today with respect to the motion to quash that we filed
24 that, you know, setting the matter out for hearing and a
25 reasonable discovery schedule will address many of the concerns

1 that were raised in the motion to quash. Thank you.

2 THE COURT: Okay. Thank you. Ms. Didion.

3 MR. KLEVANSKY: Your Honor, excuse me.

4 THE COURT: Yes.

5 MR. KLEVANSKY: May we have just a couple more minutes
6 to -- to comment on the opening of the case, and then we can
7 resume giving counsel a chance to speak to the existing motions?

8 THE COURT: Sure.

9 MR. NELIGAN: Your Honor, Pat Neligan for the Debtors.
10 And I just wanted to address at least one aspect of your
11 comments that -- when you talked about the -- the lack of the
12 cash collateral motion and -- and general first day pleadings.

13 In mere respects, this is a very straightforward case.
14 We have two Lenders, we have defaults to both Lenders, we have
15 operating losses that hopefully we'll be able to -- to turn
16 around during the Chapter 11, we have contracts we're going to
17 need to reject, not just Marriott's.

18 That said, where this is different from almost any
19 Chapter 11 I've had is that with the transition, and again I'm
20 not here to ascribe blame, you know, bank accounts were frozen,
21 the computers were frozen, the mail, we learned today, has not
22 been coming to us, because it had been frozen, supposedly
23 pursuant to Marriott's instructions, but, you know, we had tried
24 to work with Marriott and -- and their counsel, and we have
25 gotten some information from them, and -- and hopefully we can

1 just work this through.

2 There was a temptation to try to come in on the first
3 day, but we -- we were hoping that we could just have the
4 lawyers work through these issues. Nonetheless, without that
5 information, it became very difficult to get typical first day
6 pleadings.

7 For instance, on utilities, we've literally had to
8 call utility companies and -- and, you know, find out who was
9 providing utilities, what our average billing was, so we could
10 come up with the -- the deposits.

11 And -- and with respect to cash collateral and DIP
12 financing, as the Court can imagine, without financial records
13 coming up with a budget going forward is challenging, at best.
14 We had gotten a lot of that financial information, or at least
15 some of it, as I understand, and we have been able to come up
16 with budgets, and -- and we're in the process of completing the
17 first stage.

18 As Mr. Muenker mentioned, when this case started there
19 was literally no cash collateral with the bank accounts having
20 been closed. The Davidson Family Trust, which is the second
21 lien holder, advanced \$250,000 subject to the Debtor's and --
22 and Davidson requesting that the 250,000 be part of the initial
23 interim financing. They advanced that money in good faith.

24 I will tell you I had hoped to file the cash
25 collateral motion and DIP financing motion yesterday. We held

1 it up, frankly, because I wanted to work through with the first
2 lien holder, Wells Fargo, some of the issues on cash collateral.
3 They had just hired counsel late Friday, and so we've been
4 working with them over the weekend and even this morning.

5 I was hoping to file the motion today, and we have
6 several other pleadings like an employee motion that will also
7 be getting filed. There has been a delay that you would not
8 otherwise see, but as I think the Court understands in any kind
9 of transition without the information, financial information, it
10 becomes much more difficult. Hopefully, we get all the
11 financial information, we resolve the issues with Marriott and
12 proprietary information, and this case can -- can move forward
13 in what I hope is a consensual or at least hopefully consensual
14 approach.

15 In any event, I -- I did want to explain that because
16 the Court's concern, I think, is valid, and certainly if I were
17 other side I would wonder where those pleadings were.

18 THE COURT: Okay. All right. Thank you. Ms. Didion.

19 MS. DIDION: Good afternoon, Your Honor. In terms of
20 just the overall case administration and where we are with
21 things, the 20 largest lists finally got filed last night. The
22 U.S. Trustee was able to send out its solicitation letters this
23 morning and hopefully we will be able to form an Official
24 Unsecured Creditors' Committee in this case.

25 We have yet to set a date for the initial Debtor

1 interview. We are hoping to wrap that up here in the next few
2 days. People that we need to have at the initial Debtor
3 interview are unfortunately on the mainland right now. So we're
4 hoping to have a date here set quickly.

5 In addition, I have not set the 341 meeting yet and
6 hopefully at the initial Debtor interview we will be able to get
7 that date worked out with counsel, so we can get that set and a
8 notice out to Creditors.

9 In terms of the employment applications, the U.S.
10 Trustee has no objection to the employment of counsel both in
11 Dallas and local, and I did have a conversation with Mr.
12 Klevansky about the orders and the orders for employment are
13 going to be pursuant to 327(a). And so, just to clarify that on
14 the record.

15 THE COURT: Okay. Good.

16 MS. DIDION: Lastly, with regard to the cash
17 management system and the bank account, the U.S. Trustee does
18 need to spend a little bit more time reviewing this motion.
19 We've got eight bank accounts that had been disclosed pursuant
20 to this motion. I don't know if there's other bank accounts
21 that we need to be concerned with that may be controlled by
22 Marriott or perhaps another entity. Nine times out of ten,
23 normally these -- these large cases we have a prefiling meeting
24 and these kinds of issues are vetted before the case is even
25 filed, so we know exactly which accounts need to be Debtor-in-

1 possession accounts.

2 We're not sure, right now, which accounts need to be
3 converted to Debtor-in-possession accounts, which accounts may
4 have funds in them that may not be property of the Estate. So,
5 again, those are things that we need to have some time and have
6 a conversation with Debtor's counsel about.

7 So the U.S. Trustee would like to have some more time
8 with this motion. To the extent that the Court enters any sort
9 of order today, I would request that it just be an interim order
10 subject to a final hearing.

11 THE COURT: Okay. What I -- what I had in mind was
12 basically the interim order would say for the time being no
13 accounts have to be changed, not that I'm really even approving
14 what they are, but they don't have to be changed right now.

15 MS. DIDION: And -- and that would be fine with the
16 U.S. Trustee's Office. To the extent that we have any dispute
17 over any of the accounts that we deem need to be changed and the
18 Debtor opposes doing so, then we can bring those issues back
19 before the Court at a final hearing.

20 THE COURT: Right. Right.

21 MS. DIDION: All right. Thank you.

22 THE COURT: Okay. All right. Thank you. Let's see,
23 who's -- who's next? I guess I haven't heard from the -- from
24 Ms. Fenning's group. Anything from the Davidson Trust?

25 MS. FENNING: Your Honor, we just want to confirm that

1 we are ready, and willing, and in a position to fund the Debtor-
2 in-possession financing. We've been working closely with the
3 Debtor and will continue to do so, but obviously we were
4 expecting and are intending that that initial advance that has
5 been tiding over the operation of the hotel be folded into the
6 DIP financing.

7 THE COURT: Okay. All right. Before I go back to Mr.
8 Feld, is there anybody else I have missed? Okay. Apparently
9 not. Go ahead.

10 MR. FELD: Okay. Thank you, Your Honor. I'll be very
11 brief. Just to respond to a small number of things on the stay
12 relief motion and the subject of cash collateral as well.

13 Mr. Muenker made the statement that the cat was
14 already out of the bag, so there was no urgency. Not a direct
15 analogy, but if someone is robbed I don't think it's a reason
16 not to call the police because the loss was already suffered.
17 The -- the problem is that the -- despite maybe the purest
18 intentions of the -- of the new management company, the
19 proprietary materials are there in the hands of the new
20 management company, and we feel it's -- it's urgent that
21 something be done to secure it, and we will -- we're committed
22 to working with them on an order.

23 Hopefully, we will arrive at an understanding with
24 them tonight, if not by the -- by the time the Court closes
25 tonight we'll -- we'll continue working with them and maybe

1 provide the Court with something first thing in the morning, but
2 we hope to tonight.

3 On some of the additional comments Mr. Muenker made,
4 he referred to quite a large volume of boxes that were taken out
5 during the walk through. The vast majority of those boxes were
6 t-shirts and souvenir logo items. They weren't books and
7 records, they weren't financial data, they weren't the
8 proprietary materials other than having the logo of the -- of
9 the name of the hotel on them.

10 Finally, the -- there was a -- he made a statement
11 that computer files were deleted and hard drives were retained.
12 What -- what he didn't say is everything that was deleted and
13 everything that was retained were copied, because they were
14 disputed items, and there are copies remaining with the Debtor
15 and with the new management company of everything that was
16 either copied, or removed, or deleted.

17 And, again, we -- we understand that the Debtor
18 doesn't agree on the exact wording of the order. It's not a
19 particularly longer detailed order, but we'll work with them to
20 stick as closely as we can to the management agreement, but I --
21 I need to emphasize again that because of the uniqueness of this
22 so-called transition or we'll call it the -- the 2:30 a.m.
23 lockout, there really does need to be some guidance here even if
24 there's not 100 percent agreement on -- on what the management
25 agreement -- how the management agreement is interpreted. Those

1 -- those -- those rights can be reserved to have that neutral
2 third party look at it and make determinations.

3 And, finally, there were some comments that Mr.
4 Neligan made on cash collateral where I -- I believe he
5 implicated that they haven't been able to file any kind of cash
6 collateral agreement, or motion, or request for use of it,
7 because they're in need of financial records.

8 Your Honor, they have everything for two reasons. I
9 mean, Marriott, as the management company, was the party that
10 was put out on the street at 2:30 a.m. Every -- all the
11 records, all the financials were left behind and that's what
12 we're trying -- as far as the portion of that that's proprietary
13 that's what we're trying to recover, but they have everything.
14 It's sitting in the hotel. And to the extent they had trouble
15 finding anything we came back, and we provided them with -- with
16 hard copies, multiple boxes of payables, information, accounting
17 information, multiple boxes of future reservations. So they
18 have that.

19 And another thing to point out, Your Honor, is that
20 about a month prior to the bankruptcy filing and the management
21 transition, at the request of Debtor's litigation counsel there
22 was a very comprehensive books and records review that was
23 conducted and notably this was after the time that the special
24 purpose entity that was formed for the new management company
25 was already formed.

1 So, as we learned after the fact, when that books and
2 records review is being conducted this -- this strategy for the
3 -- the early morning transition was probably already in place,
4 at least there was a -- there was a decision at that point to
5 transition to a new management because the -- the management
6 company vehicle was already formed.

7 So we'll -- we'll continue to cooperate, and we
8 certainly don't want to deprive them of anything they need to
9 run their business, but it's somewhat -- they're turning things
10 on its head to say that they are -- they've been deprived of
11 anything or don't have anything they need.

12 THE COURT: Okay. All right. We'll let's -- let's do
13 this. It's -- it's just about exactly 3:00 o'clock now. If
14 you'd like we could take a recess and see if you can work
15 something out between now and 4:00 o'clock, and it sounds like
16 that may be ambitious, but if you can do it, so much the better.
17 If not, you can come back tomorrow morning. Perhaps you can
18 just submit a proposed order tomorrow morning. That would be
19 fine. Just -- let's take a recess, and you can work it out in
20 the anteroom for a while and at about 3:45 we'll check back with
21 you and see where things stand.

22 The one thing I did want to mention, in terms of the
23 neutral third party, if you want to -- if you want to bring
24 things in and have a sort of judicial resolution even on a short
25 fuse basis, I'm happy to do that.

1 I'm -- I'm reluctant even with the consent of all
2 parties to serve as the settlement judge in the case where I'm
3 also the trial judge. If there's something sort of in between I
4 would be willing to think about what you have in mind. If you'd
5 like me to discuss the matter with Judge King, see if he's
6 willing and available to act in another role I'd be happy to do
7 that.

8 So I guess those are the range of possibilities you
9 might want to think about if you're looking for a short forum
10 decision maker.

11 MR. FELD: Okay. Thank you very much. We would very
12 much appreciate that, Your Honor. We'll discuss that.

13 THE COURT: Okay. So let's just take a recess now
14 until 3:45, and we'll see where you are.

15 THE CLERK: All rise. This Court stands in recess
16 until 3:45.

17 (At which time a recess was taken until 3:40 p.m.)

18 THE CLERK: All rise. Bankruptcy Court is once again
19 in session. Please be seated.

20 THE COURT: All right. Mr. Feld.

21 MR. FELD: Thank you, Your Honor, Alan Feld again for
22 Marriott. Unfortunately, Your Honor, the Debtor has decided not
23 to engage with us in any further discussions on this. They --
24 they do not want to reach resolution on a consensual order right
25 now.

1 THE COURT: I'll give you a chance. Have a seat.

2 MR. FELD: Your Honor, in light of that there is a
3 great concern that if this is put over to a final hearing for
4 everything to be resolved that we're materially prejudiced every
5 day, every hour by that. What we would suggest and, of course,
6 the Debtor will have an opportunity to respond to this, is a
7 very basic interim order.

8 If the Court would be willing to entertain it, just
9 acknowledging that -- just referring to the management agreement
10 by name, acknowledging that what's identified and agreed to in
11 the management agreement as proprietary and confidential shall
12 be turned over, what's disputed shall be secured pending a final
13 hearing, and we would even stipulate to the provision of certain
14 key information that we acknowledge the Debtor needs to operate,
15 such as accounts receivable, accounts payable, future individual
16 reservations, immediate group and event reservations pending
17 between now and the time of a final hearing, anything else that
18 we -- we -- that -- that the Debtor reasonably requests is -- is
19 necessary to operate, and then we -- we would take the Court's
20 direction whether a third party would be appointed to resolve
21 any disputes or disputes would simply be resolved at a final
22 hearing.

23 And, of course, we would be willing to come back at
24 the earliest opportunity that the Court could accommodate us,
25 but we're extremely concerned about is that if we don't leave

1 here with at least some interim protection today, we -- we lose
2 by the clock running. And that -- there's tremendous urgency in
3 that, because as things stand now it's very easy for the Debtors
4 to say, no, they can't reach a deal with us, we're not going to
5 have a consensual order because when the clock hits 4:00 o'clock
6 they win by default because the information is with them. The
7 information is with the new management company notwithstanding
8 the -- the -- the purity of their intentions and everything.

9 And it's -- it's -- what I think would be extremely
10 unfair, even if that isn't the intended result, would be for --
11 would be for -- for us to walk away and have to come back in
12 several days, several weeks, however long it might take without
13 any kind of safeguards imposed.

14 So we -- we would -- we would be willing to come up
15 with a one page order. We'd be willing for the Court -- we'd be
16 delighted if the Court preferred to craft its own order, but
17 something along these lines just to safeguard disputed
18 information on an interim basis, and then we'll -- we'll come
19 back and proceed as however Your Honor would desire.

20 THE COURT: Okay. All right. Mr. Muenker.

21 MR. MUENKER: Thank you, Your Honor. Obviously, you
22 could tell by my reaction that I had a problem with something
23 that Mr. Feld said, and I'm not normally shocked when opposing
24 counsel makes their argument, but we were actively negotiating
25 with Mr. Feld. We were prepared to continue talking with him

1 until 3:45 as the Court had indicated.

2 Mr. Feld said if we didn't make a decision within five
3 minutes he wanted to come back and -- and get the Court on the
4 bench, so that he could continue making his arguments. So that
5 was just -- couldn't have been further from the truth.

6 The issue -- Your Honor, we certainly don't have a
7 problem with the Court setting a final hearing and -- and think
8 that probably makes the most sense.

9 The issue with respect to the interim order is, of
10 course, like the issues that we've had with Mr. Feld about his
11 proposed order, what would that order say, because there is a
12 fundamental question here as to, you know, what is their
13 property. And ultimately that is something that this Court, you
14 know, will have to decide. That is something that really isn't
15 appropriate for a motion for relief from stay. It really
16 procedurally has to be brought in a different way.

17 And so, I -- you know, I -- I suspect that there may
18 be further arguments on that issue in the future when this is
19 continued.

20 My hope is that the parties are going to continue
21 doing what they're doing and work this out consensually. The
22 problem is because -- and I understand why they did it, but
23 because they've sought this emergency relief, and we've been set
24 on short notice, we haven't been provided much opportunity at
25 this point, although we've made, I think, the most of the

1 opportunity and the time that we've had and will continue to do
2 that.

3 But going back to the point, you know, whatever order
4 that I can envision that the Court would craft that would
5 satisfy what Mr. Feld really wants is simply going to refer to a
6 category of -- of information. It will not define whether a
7 specific piece of information, and there's really no ability to
8 do that this afternoon or probably tomorrow morning, you know,
9 to go through all of the various permeantations of -- of -- of,
10 you know, what types of information might fall within a specific
11 category and, therefore, whether or not it would fall within the
12 definition that Mr. Feld, you know, would argue is proprietary
13 and confidential.

14 And what Mr. Feld wants the Debtor to do, and the
15 reason why we're having such a hard time agreeing on how to
16 safeguard that information, is he wants all of that stuff taken
17 off the property and that obviously he's going to have a huge
18 disruptive effect on the Debtor's ability to continue to operate
19 its hotel and service its guests.

20 And so, you know, I'm certainly willing -- if the
21 Court has specific concerns to talk about specific issues and --
22 and try to work through a way that we can address those -- those
23 concerns, but practically speaking I think it's going to be very
24 difficult to do that.

25 THE COURT: Okay. All right. Okay. Mr. Feld.

1 MR. FELD: Your Honor, again, we -- we would be
2 willing to work with the Debtor in any practical solution. If
3 the Court believes it's the best way to proceed we could be back
4 here first thing tomorrow morning to work through all the
5 categories. We have witnesses. Albeit we don't -- we didn't
6 have the ability to take depositions prior to this we'd be
7 willing to present evidence on all of the categories we're
8 talking about.

9 A suggested road map for that might be the -- the form
10 of the order that we drafted where each of the -- Marriott and
11 the Debtor can go through category by category, and make their
12 arguments to the Court of why this should apply or shouldn't
13 apply. We -- we could -- if the Court has the time to
14 accommodate us, we could through line by line.

15 We -- we don't think there is a practical problem -- I
16 mean what I'm suggesting as a fall back with the hearing
17 tomorrow is in effect advancing the final hearing until tomorrow
18 morning. We do think an interim solution is something that is
19 workable, and we're committed to working with the Debtor. We've
20 never been unreasonable in this. We -- we -- we -- the last
21 thing we want to do is disrupt their operations. To the extent
22 there's urgent need for certain types of information, and I'm
23 glad to go into more detail right now of what we'd be willing to
24 provide them which we think is -- is more than the entire
25 universe of everything they need, we would -- we would be very,

1 very willing work with them.

2 There's five categories of information we've offered,
3 and I -- I don't want to get into an argument with the Debtor
4 about the five minute comment and accusing Marriott of -- of
5 lying, but the truth is we were back here about 3:45 after --
6 after having some discussions that just didn't go anywhere.
7 There was no material difference in the time.

8 But the categories of information, Your Honor, that
9 we'd be willing to provide to the Debtor that -- that Marriott,
10 through its experiences believes that are necessary to operate
11 the hotel, is all future individual reservations is the first
12 category.

13 The second category would be all accounts payable,
14 excluding only Marriott internal billing, which -- which does
15 have proprietary Marriott and Loyalty Program information in it.
16 So all outside external accounts payable, that is.

17 The third category would be a complete list --
18 complete list of all hotel vendors of all kinds, all suppliers,
19 and all vendors.

20 The fourth category would be a complete list of all
21 accounts receivable, of all kinds and all sources.

22 The fifth item would be contracted group and event
23 bookings that are confirmed for the interim period between this
24 hearing, and the entry of an interim order, and the final
25 hearing or even some reasonable period beyond that final

1 hearing, so that the -- the Debtor is able to conduct its
2 business. A suggested timeframe might be 30 days for that, to
3 provide all that information for the next 30 days.

4 And an accommodation to try to get something simple
5 and straightforward accomplished, Your Honor, we -- Marriott
6 would even agree to a catchall of all non-proprietary
7 information of all kinds.

8 So if we -- if we could get a very simple order
9 fashioned to protect what -- what is agreed as protected under
10 the management agreement, with the parties coming back for a
11 final hearing and, hopefully, Your Honor, with some time in
12 between that maybe that we work through all these issues.
13 There's -- despite some of the words we've had today, there has
14 been a lot of effort on both sides, and I think Mr. Muenker just
15 expressed in continuing to work with us. We're absolutely
16 committed to working with them, nights, weekends, whatever time
17 we need to work through this, so we could hopefully get this
18 completely resolved and -- and take it off Your Honor's
19 calendar. I think we have much bigger issues to deal with once
20 this is resolved.

21 And if we could get the piece of mind of this interim
22 protection that we think is so -- so critical and so urgent, it
23 allows us and our client to sleep at night while this is being
24 sorted out first consensually, hopefully; and, secondly, back
25 before Your Honor at a final hearing if need be, but it's what

1 we -- the result our client can't really bear is -- is seeing
2 this put off and to see all the confidential information
3 remaining in the hands of the Debtor and the -- and the new
4 management company to the exclusion of Marriott.

5 THE COURT: Okay. Okay. Well, here's -- here's what
6 I think should happen. I don't think having an evidentiary
7 hearing at some time tomorrow would -- would be a good idea.
8 You know, it's not a matter of -- of my schedule or my work,
9 it's a matter of having a hearing that everybody's prepared for
10 and is likely to result in -- in an intelligible result.

11 And just one example, the management agreement itself,
12 I don't think is part of the record in the case yet. There have
13 been portions of it quoted, but the agreement itself isn't --
14 isn't really before me. So I don't think it would be
15 particularly productive to have a full-on hearing tomorrow, or
16 the next day, or in the next few days.

17 I do think that it is appropriate to have some kind of
18 a interim order providing adequate protection of Marriott's
19 claimed interest in these items. And in the absence of adequate
20 protection, the Debtor doesn't get to use the property, the
21 property of the Estate let alone property of somebody else. So
22 I think Marriott has a reasonable point in needing some kind of
23 -- of order to get us from now to a final hearing.

24 Now, there's a further question of whether a final
25 hearing on a motion for relief from stay could once and for all

1 resolve the ownership issues, but I have a feeling there's
2 enough clever people around here you'll find a way to -- to tee
3 the issues up properly, as rapidly as they could be -- be teed
4 up.

5 So I do think there has to be some kind of interim
6 order put in place. And what I'd like you to do is work on it
7 this evening and -- and come back tomorrow. And if you want
8 give me two competing proposals for an order, if you can't agree
9 on something, I'll pick one or come up with my own, but I don't
10 think we should go beyond, you know, say tomorrow unless both
11 people agree that we should go beyond tomorrow without something
12 in the nature of an interim order.

13 And then also tomorrow we could talk about the
14 schedule for the final hearing, the hearing on the motion to
15 project the contract, whatever issues there are about discovery,
16 and so forth.

17 And I -- I think we should all be prepared for the
18 reality that the interim order is not going to define everything
19 with -- with great precision. There will be -- there will be
20 categories, there may be catchalls, one way or the other or both
21 ways. It's more of an effort to get some basic principals down
22 that we can all live with over the next period of time.

23 And I think also this needs to be looked at in -- in
24 context. I remain -- I understand that we do have the potential
25 DIP Lender at least willing and the cash collaterals in the

1 works and so forth, but we really are behind where we ought to
2 be in a Chapter 11 case at this point, and I think to be fair
3 that's largely because the Debtor chose to do what it did about
4 ten days ago. I'm not saying whether that was right or wrong,
5 or smart or not, but that is the event that has put us into this
6 situation where events are running faster than anybody seems to
7 be able to keep up with them.

8 And I think to be fair; the Debtor has to recognize
9 that that was a risky decision, even if it turns out to be a
10 right decision.

11 So tomorrow the only thing in court is we have
12 videoconference hearings at 1:30 in Guam. Well, I'll be here.
13 The hearings will be in Guam. You want to come back at 9:30?
14 You want a little more time in the morning? What's your
15 preference?

16 MR. KLEVANSKY: Can we take a moment and let them
17 confer, Your Honor?

18 THE COURT: Of course.

19 MR. MUENKER: Would 11:00 o'clock be okay, Your Honor?

20 THE COURT: I think so. Madam Clerk, is that --

21 MR. FELD: Your Honor, if we could have just one
22 moment?

23 THE COURT: Sure. Of course, yes.

24 MR. FELD: Your Honor, the only concern, excuse me;
25 let me come to the microphone. Your Honor, the only concern is

1 that the parties are clearly going to use their best efforts to
2 try to come with a fully consensual order tomorrow. The only
3 concern is if we're unable to do that, and we have to fashion
4 something together in -- in court at Your Honor's suggestion.
5 Would an 11:00 o'clock hearing allow enough time for that before
6 -- given the lunch hour and given your afternoon hearings, or
7 would it be better to start a little bit earlier?

8 We'll certainly -- we're going to work on this tonight
9 late into the evening there's no question. The Debtor's counsel
10 thought that we might want a little time tomorrow morning as
11 well, but we're -- we're very sensitive to the Court's time and
12 having enough time in front of you to --

13 THE COURT: Well, see I get to eat up here if I want.
14 So maybe that's the way to get you guys to agree to something.
15 I could sit here and eat, and you guys won't be.

16 MR. MUENKER: We're happy with 9:30, we're happy with
17 10, we're happy with 10:30, we're happy with 11.

18 THE COURT: Let's make it 10:30. Let's make it 10:30
19 and that way you've got, you know, tonight, a few hours in the
20 morning, an hour and a half or two hours before the normal lunch
21 hour, and we'll see where we are.

22 MR. FELD: Okay. That's -- that's perfect, Your
23 Honor. Thank you very much for accommodating us.

24 THE COURT: Okay. 10:30 tomorrow then. Okay. And
25 that -- by the way just to confirm that will be non-evidentiary

1 hearing, simply to work on an interim order, and to set a
2 schedule for the remaining matters.

3 MR. KLEVANSKY: Your Honor -- oh, sorry.

4 THE COURT: Yes.

5 MR. KLEVANSKY: May we submit interim orders on the
6 matters that the Court, I think, viewed as either uncontested or
7 determined on an interim basis?

8 THE COURT: The -- the only hesitation I have is those
9 need final hearings also and perhaps -- let's just talk about an
10 overall schedule tomorrow. I mean I think you can -- you can
11 continue to operate overnight without a written order. You
12 know, so -- so let's -- let's -- since we'd have a blank in
13 those orders in any event let's take those up tomorrow.

14 MR. KLEVANSKY: That would be fine, Your Honor. Thank
15 you.

16 MR. FELD: Your Honor, just one last question on
17 process.

18 THE COURT: Yes.

19 MR. FELD: If -- hopefully we are able to reach an
20 agreement, but if we're not would -- Your Honor mentioned that
21 we -- the Court would take a look at two competing orders.
22 Would it be okay just to bring that with us to hearing and -- as
23 opposed to filing them and just --

24 THE COURT: Yeah, that's -- that's fine. We could
25 take a break if I need some time to read it. And, you know, if

1 we end up that way it ought to be something short. You said a
2 page. I'm not going to hold you to that literally because the
3 caption's half a page, but -- but if it turns out to be
4 something that I'm basically coming up with it probably needs to
5 be shorter rather than longer in any event. So that would be
6 fine.

7 MR. FELD: Yeah, we -- we -- we take that -- we
8 certainly take that to heart, and our -- our preference is to go
9 very short as well. Thank you again.

10 THE COURT: Okay. Thank you. Court's in recess.

11 THE CLERK: All rise. Court stands in recess subject to
12 call.

13 (At which time the above-entitled proceedings were
14 concluded 4:00 p.m.)
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CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated this 13th day of September, 2011.

/s/ Jessica B. Cahill

Jessica B. Cahill